



Legal issues bulletin

Number 37 reviewed October 2012

The Occupational Health and Safety Act, 2000 – a summary of the key features

IMPORTANT NOTE – The Occupational Health and Safety Act 2000 was repealed and replaced by the Work Health & Safety Act 2011 from 1 January 2012. Action under the previous legislation can however be commenced any time up to two years from the date of an incident and the provisions of the previous legislation will continue to apply to those matters. As a result, the information contained in this bulletin will remain relevant in respect of some issues. A new bulletin addressing the key features of the 2012 legislation will be developed and made available for staff as soon as possible.

Until the new bulletin is finalised, staff seeking information on the provisions of the new Work Health and Safety Act 2012 should refer to the department's Work Health & Safety directorate for further advice.

The Occupational Health and Safety ("OH&S") Act 2000 and the Occupational Health and Safety ("OH&S") Regulation, 2001 ("the legislation") together outline the obligations of employers regarding the health, safety and welfare of people at work. This bulletin provides only a summary of the main relevant aspects of the legislation.

Throughout this bulletin, any reference to "employer" means the department of Education.

What are the duties of employers?

Employers have a number of duties arising from the provisions of the legislation.

They have a duty to employees

Employers must ensure the health, safety and welfare of their employees when at work by:

- maintaining those places of work under their control in a safe condition and ensuring safe entrances and exits
- making arrangements for ensuring the safe use, handling, storage and transport of plant and substances
- providing and maintaining systems of work, and working environments, that are safe and without risks to health
- providing information, instruction, training and supervision necessary to ensure the health and safety at work of employees
- providing adequate facilities for the welfare of employees.

They have a duty to non-employees

Employers must also ensure that non-employees are not exposed to risks to health and safety arising from the conduct of the employer's undertaking while they are at the employer's place of work. Non-employees include students and visitors to school premises.

They have a duty to consult with employees

Employers must consult their employees so that they have an opportunity to contribute to making decisions which affect their occupational health, safety and welfare. Consultation requires:

- the sharing of relevant information about health and safety with employees
- the opportunity for employees to express their views and contribute in a timely way to the resolution of health and safety issues of work, and
- valuing employee's views and taking them into account.

Consultation does not necessarily mean that the requests of employees will always be implemented.

A step-by step guide on [OH&S consultation arrangements](#) can be located on the department's [Work Health and Safety directorate](#) website. It is an offence if an employer fails to consult with employees on occupational health and safety matters.

They have a duty to identify hazards and manage risks

Employers are required to be pro-active in identifying and assessing any hazards at the workplace. Employers are also obliged to manage any risks arising by taking action to assess and eliminate those risks. Alternatively, if it is not reasonably practicable to eliminate identified risks, the employer is obliged to take appropriate action to control them. Employers are required to exercise this duty in respect of employees and non-employees who are at the place of work. Failure to identify hazards and manage workplace risks is an offence under the legislation and may incur penalties.

Do employees have duties under the Legislation?

Yes. All employees must take reasonable care for the health and safety of persons who may be affected by their acts or omissions at work. Employees must also cooperate with their employer to enable compliance with any requirement imposed on the employer or any other person under the legislation. This may involve either conducting or assisting in the conduct of a risk assessment. "Any other person" can mean, for example, contractors and their employees. Employees may be liable under the legislation for failure to comply with their obligations.

It is very important that staff cooperate and follow directions and policy in relation to safety matters. For example, employees must not intentionally or recklessly interfere with or misuse things provided for health, safety and welfare, such as protective equipment. Failure to comply with relevant policy or procedures is a serious issue and may result in departmental disciplinary action.

Do workplace managers have any obligations under the Legislation?

departmental workplace managers have obligations commensurate with their general level of responsibility within the organisation - i.e. they will have a higher level of responsibility for occupational health and safety than subordinate staff.

Courts have recognised that a discrepancy can exist between an employer's OH&S policies and implementation at the workplace. Management must be vigilant to ensure that what is put in place by way of policy is actually discharged by those who have day to day responsibilities in the workplace.

Are there any special considerations that need to be taken into account by school staff?

There are no provisions in the legislation that apply only to the department.

However the court has indicated that employers such as the department of Education could be considered to have an additional responsibility in that they set the standard that young people will carry into their working lives. It is therefore important for workplace managers to be familiar with safety policies and procedures and to ensure that they are complied

with in the workplace. These responsibilities are particularly important with respect to ensuring that students are made aware of relevant safety requirements and that they conduct themselves accordingly in schools.

The Legislation has a provision relating to "controllers" of work premises (section 10). Who is regarded as the controller of work premises?

For the purposes of section 10, the department is considered the controller of work premises and plant or substances used at those premises, not individual workplace managers. However workplace managers will have responsibilities to help ensure that the department meet their obligations.

What are the obligations of controllers of premises, plant and substances?

The department, for example, has an obligation to ensure that any premises made available to other persons as a work place, by lease, licence or other contract, are safe and without risk to health when properly used. The same applies to plant and substances. For example, this obligation applies where a school's facilities are used by an evening college or coaching school.

Although they have a responsibility to help ensure that any facilities leased are safe and compliant with the legislation, individual workplace managers are not subject to personal liability under the section for failing to fulfil their obligations.

What are the powers of WorkCover Inspectors?

An inspector may conduct an investigation:

- in response to a complaint
- following notification of an injury or dangerous event
- as part of a planned project
- by virtue of a random visit
- in response to a matter of public concern.

Can Workcover inspectors enter workplaces?

Yes. Inspectors have powers of entry and inspection in relation to workplaces. The relevant provisions of the legislation refer to the "occupier" of premises. In relation to schools, the "occupier" is the principal. An inspector may enter any premises believed to be a place of work without notice, but must notify the occupier as soon as reasonably practicable after doing so unless:

- the occupier is already aware that the inspector has entered
- it would unreasonably delay the inspector in urgent cases, or
- it would defeat the purpose for which the premises were entered.

The inspector must have identification from WorkCover and must produce that identification if asked to do so by the occupier. Unless the inspector has a search warrant, entry may only be made at a reasonable time in the daytime or when work is carried on.

What powers of inspection do Workcover inspectors have?

Upon entry an inspector may:

- make searches, inspections, examinations and tests, including the taking of photographs, videos and audio recordings
- take for analysis samples of substances or things
- require any person at the premises to answer questions and give information
- require the occupier to provide such assistance and facilities as are reasonably necessary for the inspector to exercise his or her functions
- require the production of and inspect records at the premises, including taking any copies
- exercise any other functions that are reasonably necessary for the purposes of the legislation

An inspector can also issue notices requiring the production of documents or the giving of information and the attendance of the person concerned before the inspector for such purposes.

Do I have to assist a Workcover Inspector who enters my workplace?

Yes. A person must not:

- obstruct, hinder or impede an inspector
- intimidate, threaten or attempt to intimidate an inspector
- without reasonable excuse, refuse to answer a question or to comply with a requirement of an inspector duly exercising his/her powers
- intentionally mislead or supply an inspector with false information

Do I have to make a statement to a Workcover inspector if the statement will incriminate me?

An incriminating statement is one that includes evidence that an individual is guilty of a breach of the legislation or has committed any other criminal offence.

A person is not excused from making a statement to an inspector on the grounds that the statement may tend to incriminate him or her.

However the statement is not admissible as evidence in a WorkCover prosecution or any other criminal proceedings against the individual if the person claims, before making the statement that it might tend to incriminate him or her. It is also not admissible unless the inspector drew the individual's attention to their right to make a claim that the statement might tend to incriminate them before the statement was made.

As a precaution where a staff member is asked to give a statement to an inspector, if the inspector asks "Do you wish to claim the privilege against self-incrimination" it is recommended that the staff member reply "Yes".

Any document produced to an inspector is admissible in evidence even though it might tend to incriminate a person.

Do authorised employee representatives have any powers under the legislation?

Yes. Authorised union representatives may enter work premises for the purpose of investigating a suspected breach of the legislation. An authorised union representative is an officer or employee of the union who holds an authority issued by the Industrial Registrar under section 299 of the Industrial Relations Act. They may be required to produce the authority by the occupier of the premises.

They have the power to:

- make searches and inspections, including taking photographs, videos and audio recordings
- require the occupier to provide such assistance and facilities as are reasonably necessary for the officer to exercise his or her functions
- require the production of and inspect any records at the premises that directly affect or deal with the occupational health and safety of employees working at that premises, including taking copies
- exercise other functions that are reasonably necessary for the purposes of the legislation

Unlike inspectors, they do not have the power to insist upon answers to questions or interviews with individuals nor are they empowered to take samples of material for analysis.

What can happen if the legislation is breached?

If a breach of the legislation is found, an inspector can:

- issue an Improvement Notice requiring the breach to be remedied within the period specified in the notice (usually at least 7 days). Fines can be imposed for failure to comply with an Improvement Notice.
- where there is an immediate risk to safety, issue a Prohibition Notice requiring the person who has control over the activity that is of concern to cease carrying on the activity until the problems are remedied. Fines can be imposed for failure to comply with a Prohibition Notice.
- issue a Penalty Notice imposing a fine. This is usually in respect of minor infringements. A person issued with a Penalty Notice may, instead of paying the fine, choose to have the matter dealt with by a court. If this action is contemplated, principals should contact the [Legal Services](#) for advice.

- recommend prosecution. A prosecution involves the commencement of court proceedings and a hearing at which witnesses may be called to give evidence. The decision to prosecute is made by WorkCover after the consideration of legal advice.

An Improvement Notice or Prohibition Notice may detail measures to be taken to remedy the matter causing concern or otherwise comply with the notice. If a school or other department workplace site is served with such a notice, the issuing inspector should be contacted if there is any doubt about what is required to comply with the notice.

Notices issued on the department can be served on schools, as well as area, regional or state offices. Copies of notices issued to any department workplace must be forwarded to the [Work Health and Safety directorate](#) and to relevant Regional WH&S Liaison Managers.

Can an extension of time for responding to notices be provided?

If workplace managers feel that there is insufficient time for compliance given in the notice, the inspector should be contacted and an extension of time sought. Extensions are usually granted. If an extension is not sought and the time in the notice is not complied with, the department may be liable to a fine for failure to comply with the notice.

Can I seek a review of a Workcover Notice?

A person issued with an Improvement Notice or a Prohibition Notice may apply in writing to WorkCover for a review of the notice if it is believed the notice is incorrect or unreasonable. This application must be made within 7 days of the notice being issued, so it is important to act quickly if there is concern about the validity of the notice. Information about the review process is provided on the back of the notice.

A person who is not satisfied with the result of a review by WorkCover may appeal against the notice to an Industrial Magistrate. The right of appeal is only available if WorkCover is first asked to review the notice within 7 days. If an appeal is contemplated, advice can be sought from Legal Services. It may also be necessary to seek the advice of relevant regional or state office staff in order to assess the prospects of an appeal.

If Workcover commences a formal investigation, am I required to tell anyone?

A formal investigation is generally indicated when a Workcover inspector takes written statements from people.

If a school or other departmental workplace is visited by a WorkCover inspector and statements are proposed to be taken from any staff with respect to a potential breach of the Legislation, Legal Services should be contacted immediately. Depending on the circumstances, it may be necessary for further investigation to be undertaken on behalf of the department while the facts relating to the issue are still fresh in the minds of the individual staff members concerned. This is important in view of the fact that a period of up to two years may pass between the time of the incident and the commencement of any WorkCover prosecution.

Do I need to notify Workcover of accidents that happen at my workplace?

Certain accidents and events must be notified to WorkCover. This requirement applies to accidents involving students and visitors as well as staff.

If any doubt exists about the requirements, advice should be sought from the area staff support officer or regional WH&S liaison manager.

The [Work Health and Safety directorate](#) can also be contacted.

Relevant departmental policies

All departmental workplace managers must ensure they are aware of the following departmental documents which address occupational health and safety issues:

- [Occupational Health and Safety - Injury Management, Health and Wellbeing](#)

In addition, principals need to be aware of the following policies specifically relevant to school activities:

- [Guidelines for the Safe Conduct of Sport and Physical Activity in Schools](#)
- [School Excursions Policy](#)

Departmental workplace managers should also refer to the department's [WH&S webpage](#) which contains a variety of materials about occupational health and safety issues relevant for departmental work sites.

About Legal Services

Legal Services is here to support our government schools. [Staff can contact Legal Services by email or phone.](#)

Legal Services can only provide legal advice to departmental staff. It is not able to provide legal advice or assistance to parents, students or members of the public due to the potential for a conflict of interest.